

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff/Respondent,
v.
ENIO ZARAGOZA-SANTA CRUZ,
Defendant/Petitioner.

NO. CR-08-2095-EFS
(NO. CV-10-3085-EFS)

ORDER DENYING MOTION UNDER 28
U.S.C. § 2255 TO VACATE, SET
ASIDE, OR CORRECT SENTENCE BY
A PERSON IN FEDERAL CUSTODY

Before the Court, without oral argument, is Petitioner Enio Zaragoza-Santa Cruz's Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by A Person in Federal Custody. (ECF No. [248](#).) Mr. Zaragoza-Santa Cruz contends the sentence is invalid because 1) he was illegally searched; 2) the sentence was imposed based on "stipulated facts" that he was manufacturing methamphetamine, when in fact, it was marijuana; and 3) he received ineffective assistance of counsel. For the reasons set forth below, the Court denies Mr. Zaragoza-Santa Cruz's motion.

A. Background

On September 16, 2008, Mr. Zaragoza-Santa Cruz was charged with conspiracy to manufacture at least 1,000 marijuana plants, in violation of 21 U.S.C. § 846 (Count 1), and manufacturing at least 1,000 marijuana

1 plants, in violation of 21 U.S.C. § 841(a)(1) (Count 2) (ECF No. [1](#).) Mr.
2 Zaragoza-Santa Cruz entered a guilty plea to Count 1 of the Indictment
3 on September 16, 2008. (ECF No. [146](#).) Because Mr. Zaragoza-Santa Cruz
4 had a prior drug felony conviction, this charge had a mandatory-minimum
5 sentence of twenty (20) years. 21 U.S.C. § 8441(b)(1)(A) & 851. The
6 Court accepted Mr. Zaragoza-Santa Cruz's plea as knowing, intelligent,
7 and voluntary (ECF No. [156](#)) and sentenced him to twenty (20) years
8 imprisonment. (ECF No. [226](#).) Judgment was entered on August 27, 2009.
9 *Id.* Mr. Zaragoza-Santa Cruz filed the motion under consideration on
10 September 27, 2010.

11 **B. Analysis**

12 Section 2255 of Title 28 allows a prisoner in custody to attack a
13 sentence on the grounds that such sentence was imposed in violation of
14 the federal constitution or law, the Court did not have jurisdiction to
15 impose such a sentence, the sentence was in excess of the maximum
16 authorized by law, and/or otherwise subject to collateral attack. 28
17 U.S.C. § 2255. The Court examines a § 2255 motion and the record to
18 determine whether summary dismissal is warranted. Rules Governing § 2255
19 Proceedings for the U.S. Dist. Cts 4(b). The Court must deny the motion
20 "[i]f it plainly appears from the face of the motion and any annexed
21 exhibits and the prior proceedings in the case that the movant is not
22 entitled to relief." *Id.*; see also *Baumann v. United States*, 692 F.2d
23 565, 571 (9th Cir. 1982).

24 **1. Timeliness**

25 Before addressing Mr. Zaragoza-Santa Cruz's grounds for relief on
26 the merits, the Court considers the threshold issue of whether his

1 petition is timely. In order to bring a § 2255 suit, the petitioner must
2 file suit within a year of:

- 3 (1) the date on which the judgment of conviction becomes final;
- 4 (2) the date on which the impediment to making a motion created
by governmental action in violation of the Constitution or laws
of the United States is removed, if the movant was prevented
from making a motion by such governmental action;
- 5 (3) the date on which the right asserted was initially
recognized by the Supreme Court, if that right has been newly
recognized by the Supreme Court and made retroactively
applicable to cases on collateral review; or
- 6 (4) the date on which the facts supporting the claim or claims
presented could have been discovered through the exercise of
due diligence.

7
8
9 *Id.*

10 Mr. Zaragoza-Santa Cruz does not specify why his petition was
11 timely; rather, he believes that § 2255's one-year limitation "DOES NOT
12 APPLY IN THIS MATTER.[sic]?" This belief is unfounded; Mr. Zaragoza-
13 Santa Cruz must comply with § 2255's one-year limitation. Mr. Zaragoza-
14 Santa Cruz fails to explain, and the Court cannot discern, under which
15 of the subsections his first ground for relief, that he was subjected to
16 an illegal search, and third ground for relief, that he was denied
17 effective assistance of counsel, were timely brought. And while he does
18 he explain why his second ground for relief, that the sentence was
19 imposed based on "stipulated facts" that he was manufacturing
20 methamphetamine rather than marijuana, was timely, the Court anticipates
21 the limitation period should be measured under subsection (1). But
22 subsection (1) is inapplicable. Mr. Zaragoza-Santa Cruz was sentenced
23 on August 13, 2009, (ECF No. [216](#)), and the Judgment in a Criminal Case,
24 (ECF No. [226](#)), was entered on August 27, 2009. In the plea agreement,
25 Mr. Zaragoza-Santa Cruz waived his right to appeal his sentence and
26

1 conviction (ECF No. [150](#)); thus, the statute of limitations began to run
2 on the date judgment was entered: August 27, 2009. Fed. R. App. P.
3 4(b)(1)(A)(I); see *Clay v. United States*, 537 U.S. 522 (2003); *United*
4 *States v. Schwartz*, 274 F.3d 1220, 1223 (9th Cir. 2001) (finding that the
5 statute of limitations begins to run "upon the expiration of the time
6 during which [the petitioner] could have sought review by direct
7 appeal"). Subsection (1) is inapplicable because one year and one month
8 passed between the date the judgment became final and the filing of this
9 petition on September 27, 2010. He does not present any facts indicating
10 that any of the other subsections apply to this ground for relief.
11 Accordingly, Mr. Zaragoza-Santa Cruz's petition is untimely.

12 **2. Grounds for Relief**

13 In his plea agreement, Mr. Zaragoza-Santa Cruz expressly waived his
14 right to appeal his conviction and sentence:

15 Defendant understands that he has a limited right to appeal or
16 challenge the conviction and sentence imposed by the
17 Court. Defendant hereby expressly waives his right to appeal
18 his conviction and the sentence the Court imposes. Defendant
19 further expressly waives his right to file any post-conviction
20 motion attacking his conviction and sentence, including a
motion pursuant to 28 U.S.C. § 2255, except one based upon
ineffective assistance of counsel based upon information not
now known by Defendant and which, in the exercise of due
diligence, could not be known by Defendant by the time the
Court imposes the sentence.

21 (ECF No. [150](#), ¶ 17.) Based on this waiver, Mr. Zaragoza-Santa Cruz
22 waived the right to challenge his conviction based upon his first ground
23 for relief, that he was searched without a warrant, and second ground for
24 relief, that the sentence was imposed based on "stipulated facts" that
25 he was manufacturing methamphetamine rather than marijuana.

1 But even if he had not waived those challenges, there is no evidence
2 to support them. To the contrary, Mr. Zaragoza-Santa Cruz's signed plea
3 agreement specifically refers to a search warrant, obtained for the
4 property at 3360 Progressive Road, Wapato, Washington, after LEAD
5 Detective Mike Akins smelled marijuana and observed several suspects flee
6 that residence during a "knock and talk." *Id.* ¶ 6. Mr. Zaragoza-Santa
7 Cruz admitted to assisting in the manufacture of marijuana there for
8 about two (2) days. *Id.* Thus, there is no evidence that the search of
9 the property is illegal, and Mr. Zaragoza-Santa Cruz admitted to such
10 facts.

11 Nor is there any evidence that his sentence was imposed based on a
12 conviction for methamphetamine rather than marijuana. The record plainly
13 establishes that Mr. Zaragoza-Santa Cruz's Indictment (ECF No. [1](#)), Plea
14 Agreement (ECF No. [150](#)), Presentence Investigation Report (ECF No. [186](#)),
15 and Judgment (ECF No. [226](#)) were based on facts and applicable law for
16 conspiracy to manufacture at least 1,000 plants of marijuana. Mr.
17 Zaragoza-Santa Cruz fails to identify where in the record the Court
18 imposed a conviction or sentence for manufacture of methamphetamine.

19 Based on this waiver, it appears that only Mr. Zaragoza-Santa Cruz's
20 third ground for relief, for ineffective assistance of counsel,
21 potentially survives. But this argument is seriously flawed. Mr.
22 Zaragoza-Santa Cruz has failed to provide facts justifying his belief
23 that defense counsel was ineffective or uncooperative and how that claim
24 is based on information he either did not know or could not have known
25 at the time of sentencing. A habeus corpus petition must "specify all
26 the grounds for relief available to the petitioner" and "state the facts

1 supporting each ground." Rule Governing § 2255 Proceedings for U.S.
2 Dist. Cts 2(b); see also *Mayle v. Felix*, 545 U.S. 644, 655-56
3 (2005). Mr. Zaragoza Santa-Cruz simply states:

4 Due to the fact that councel [sic] was appointed by thje [sic]
5 distrctc [sic] court councel [sic] obtained a conviction just
6 to pass the case, did not obtain a fir [sic] conviction due to
7 the fact that the actual facts of the case where [sic] never
8 brought upon the courts, to proceee [sic] not only by testimony
9 if not by facts of evidence recovered.

10 (ECF No. [248](#), at 7.) Mr. Zaragoza-Santa Cruz apparently believes that
11 defense counsel was ineffective because he either counseled or allowed
12 him to enter a guilty plea, thereby precluding him from introducing
13 testimony and evidence at trial. These facts, without more, are
14 insufficient to show that defense counsel's representation fell below the
15 standard of care, especially in light of the twenty-year mandatory-
16 minimum Mr. Zaragoza-Santa Cruz faced.

17 Accordingly, the Court finds that Mr. Zaragoza-Santa Cruz is not
18 entitled to relief. The Court is sympathetic to Mr. Zaragoza-Santa
19 Cruz's situation: he will serve twenty years imprisonment because of two
20 days' work at a marijuana grow operation. But because Mr. Zaragoza-Santa
21 Cruz, a minor-participant day laborer, was prosecuted as a co-
22 conspirator, and then subject to a 21 U.S.C. § 851 Information alleging
23 his prior felony conviction, he faced a twenty-year mandatory-minimum
24 prison sentence. For this reason, the Court was powerless to impose a
25 lower sentence.

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Mr. Zaragoza-Santa Cruz's Motion Under 28 U.S.C. § 2255 to
3 Vacate, Set Aside, or Correct Sentence by A Person in Federal Custody
4 (**ECF No. 248**) is **DENIED**.

5 2. The Court **DECLINES** to issue a certificate of appealability.

6 3. The related civil case file is to be **CLOSED**.

7 **IT IS SO ORDERED.** The District Court Executive is directed to enter
8 this Order and provide a copy to the Petitioner:

9 Enio Zaragoza-Santa Cruz(12528-085)
10 FCI-Gilmer (West Virginia FBOP)
P O Box 6000
11 Glenville, WV 26351

12 **DATED** this 22nd day of December 2010.

13 S/ Edward F. Shea

14 EDWARD F. SHEA

15 United States District Judge

16 Q:\Criminal\2008\2095.untimely.wpd